

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MAC App. No. 2 of 2021

Date of Decision: 10.11.2021

New India Assurance Co. Ltd Vs. Smti Khein Kharsati represented by
Smti. Shandra Kharsati & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.
For the Respondent(s) : Mr. H. Nongkhlaw, Adv. for R 1.
None for R 2 & 3.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. The Judgment dated 13.06.2019 passed by the learned Member, Motor Accident Claims Tribunal(MACT), East Khasi Hills, Shillong is under challenge in this instant appeal.

2. Brief facts of the case is that on 17.09.2011 at about 9:00 PM a Motor Vehicle Accident occurred at a place called Pomlahier, Mawryngkneng in the East Khasi Hills District of Meghalaya whereby one Truck bearing registration number AS01-BC-3835 dashed against one pedestrian Banlong Kharsati who received head and multiple injuries and died on the spot.

3. The mother of the deceased, the Respondent No. 1 herein through her daughter Smti. Shandra Kharsati sought for compensation on account of the death of her son, named above from the MACT, Shillong for an amount of

₹14,30,000/- (Rupees fourteen lakhs and thirty thousand) only against the Owner, Driver and Insurer of the said vehicle in question.

4. It may also be mentioned that as a result of the said Motor Vehicle Accident, the police had registered a criminal case being Madanriting P.S. Case No. 92 (9) of 2011 under Section 279/304 A IPC against the driver of the said truck.

5. On the matter being taken up by the MACT, Shillong, the Insurer/New India Assurance Co. Ltd, the appellant herein as OP No. 1 has entered appearance and filed the written statement. The Owner and Driver duly arrayed as Ops No. 2 and 3 respectively failed to appear in the matter and the learned Member, MACT proceeded exparte against them.

6. The learned Member, MACT then framed three issues, Viz; (i) Whether the Claim petition is maintainable? (ii) Whether the death of the deceased was due to the fault of the truck No. AS01-BC-3835 or the fault of the deceased? and (iii) Who is liable to pay compensation and to what extent?.

7. The Claimant/Respondent No. 1 examined three witnesses as CW. 1, 2 and 3 respectively while the OP No. 1/Appellant has examined two witnesses as DW. 1 and 2 respectively. The matter was finally argued by the parties and on conclusion of the same, the learned Member, MACT, Shillong has awarded compensation of ₹ 3,62,500/- (Rupees Three lakhs, sixty-two thousand and five hundred) only in favour of the Claimant/Appellant. The said compensation was directed to be paid by the Appellant-Insurance Company herein along with 9% interest p.a.

8. Being highly aggrieved at and dissatisfied with the said Judgment and Order dated 13.06.2019, the Appellant/Insurance Company has preferred this appeal inter alia on the ground that the same is not sustainable both under facts and law and is required to be set aside and quashed.

9. Heard Mr. S. Jindal, learned Counsel for the Appellant who has confined his argument on the findings of the learned Member, MACT on issue No. (iii), “Who is liable to pay compensation and to what extent?”. Even on this issue, the learned Counsel has taken exception on the finding of the MACT on the issue of the driving licence of OP/Driver wherein at paragraph 27 of the said Judgment, the learned Member, MACT, on appreciation of the evidence as regard the driving licence of the driver who has produced the same during evidence as Exhibit – B which shows that he was holding a driving licence for driving vehicle in the category of LMV, MGV, HGV, has found the said driving licence valid at the time of the accident, which according to the learned Counsel is not the correct interpretation of the evidence in this regard and as such, has failed to absolved the OP/Insurance Company from its liability on this ground and further that the interest awarded at the rate of 9% pa is well above the prevailing rate of interest entitled to by the Respondent No. 1/Claimant.

10. To buttress his point, Mr. Jindal has led this Court to the evidence of DW-1, Shri H.F. Khongsit who was the District Transport Officer(DTO) at the relevant period, wherein in his deposition, he has stated that “... *Driving licence No. ML05 19990014477 was issued from DTO, East Khasi Hills Shillong to Mr. Sylvester Sohtun. It was issued on 02.11.1999 and is valid only for Light Motor Vehicle (none transport) and valid upto 06.03.2019. He was granted to upgrade heavy motor vehicle on 02.11.2011 to 30.11.201...*”. In his cross-examination, this witness has reiterated that the driver Mr. Sylvester Sohtun was having a valid driving licence but only for light motor vehicle and his licence was upgrade to heavy motor vehicle only on 02.11.2011.

11. Again, the evidence of DW-2, Mr. Sylvester Sohtun, who was the driver of the said Truck in question, was also pointed out when he has deposed that he was issued with a valid driving licence on 02.11.1999 and valid upto 30.11.2011. However, he admitted that the said licence was issued for non-transport. This makes it clear that the said driving licence does not

bear the necessary endorsement on the date of the accident. In the light of this evidence, Mr. Jindal has submitted that the learned Tribunal ought to have come to a finding to exonerate the Insurance Company or in the alternative, if fasten with the initial liability of having to pay the said compensation, then the liberty to pay and recover ought to have been allowed which was not done so.

12. Further submitting that the driver in this case does not possess a valid driving licence, therefore the Insurance Company cannot be held responsible if there has been a violation of the policy conditions. The case of *United India Insurance Co. Ltd v. Gyan Chand and others: (1997) 7 SCC, 558* paragraphs 12, 13 and the case of *Oriental Insurance Co. Ltd v. Annemma and others: (2019) ACJ, 409* paragraph 16 was cited to prove this point. However, Mr. Jindal has candidly submitted that the Appellant is not pressing on this point in their favour.

13. Again, Mr. Jindal has submitted that the recent trend as noticed from a number of judgments of the Hon'ble Supreme Court is that even in cases where there is a violation of policy conditions or that there is a fake or invalid driving licence, the Hon'ble Supreme Court has directed the Insurer to pay first then recover the same from the Owner. In this regard, the case of *New India Assurance Co., Shimla v. Kamla and others: (2001) 4 SCC, 342* where the Hon'ble Supreme Court has employed the principle of pay and recover was cited. This principle if applied to this instant case is not opposed by the Appellant if found justified by this Court it is submitted.

14. On the issue of the rate of interest, Mr. Jindal has submitted that the award of 9% interest by the learned Tribunal is not justified under the prevailing financial and economic condition of the Country and as such, as was held by this Court in the case of *Smti Ronilla Ch. Marak & Anr v. Mr. Aftar Ali and 2 Ors* whereby the rate of interest was quantified at 6%, the same may be made applicable in this case too.

15. Mr. H. Nongkhlaw, learned Counsel appearing for the Respondent No. 1 has submitted that the fact that the accident has taken place and that the deceased son of the Respondent/Claimant who was a bachelor at the time of his death died as a consequence of the said Motor vehicle Accident involving the said Truck Number AS01-BC 3835 which was duly insured with the Appellant-Insurance Company herein, is not a disputed fact. Therefore, the Respondent No. 1/Claimant is entitled to the award of compensation passed by the learned Tribunal.

16. Mr. Nongkhlaw has however submitted that irrespective of who is liable to pay the said compensation, whether the Owner or the Appellant/Insurance Company, the Respondent No. 1/ Claimant is entitled to the same and this Court may direct the same to be paid accordingly.

17. On the question of interest, Mr. Nongkhlaw has submitted that the fact that the accident occurred in the year 2011 and the compensation award was made in the year 2019, the award of 9% interest is justified and this Court may not reduce the same as prayed for by the Appellant.

18. Having heard the learned Counsels for the parties, this Court on consideration of the matter in hand, has thought it fit to first take up the issue argued by the learned Counsel for the Appellant who has literally confined his argument only on the issue of whether the Appellant/Insurer could be fasten with the liability of payment of the awarded compensation on the ground that the driving licence of the driver of the truck involved in the accident, though being a valid one, was however not the proper one to enable the said driver to drive a transport vehicle, there being no endorsement on the said licence as on the date of the accident and in the alternative, if the Appellant/Insurer is directed to satisfy the said award, then the principle of 'Pay and recover' is to be applied to enable the Appellant/Insurer to recover the same from the Owner of the said Truck involved.

19. In this regard, on perusal of the evidence of OPW-1, the District Transport Officer, it is seen that he has exhibited the Extract of Driving Licence of the driver, Shri Sylvester Sohtun which revealed that the same was issued for Light Motor Vehicle (LMV) on 02.11.1999 and under the heading of Catg(Category) the letters NT(Non-Transport) was noted. In the next column, under the heading COV(Cover), the letters TRANS(Transport) was noted and the date of issue of the same was indicated as 02.11.2011.

20. The driver, Shri Sylvester Sohtun has been examined as OPW-2 and he has exhibited his driving licence as Exhibit –B which shows that under the column ‘Date of issue’, the date 02.11.1999 was indicated while the validity of the same was noted as 30.11.2011.

21. In his evidence, the OPW-2(driver) has stated in his Examination-in-Chief that the driving licence was issued to him on 02.11.1999 and valid upto 30.11.2011. He however stated that the said driving licence was issued for non-transport. This admission is relevant, inasmuch as, it corroborates with the evidence of the OPW-1(DTO) on this point.

22. It is not the case of the Appellant/Insurer that the said driver was not holding a valid driving licence, but that he was not holding a driving licence with the endorsement of ‘Transport’ on it, rather he was authorized to drive a transport vehicle only from 02.11.2011, about two months or so from the date of the said accident.

23. The learned Tribunal in holding that the driver is having a valid driving licence at the time of the accident is not wrong, however no definite finding was returned as to whether the said driving licence was having an endorsement of ‘Transport’ on it at the time of the accident. On examination of Exhibit –A, what can be ascertained is that the driver was allowed to drive a transport vehicle only from 02.11.2011. In all probability, the OPW-1 is privy to the full details of the said driving licence of the driver as could be seen from the extract (Exhibit-A) and the one held by the driver (Exhibit-B), is an abridged format of the same which would not carry all the details of

date of renewal or subsequent endorsement of 'Transport' on the body of the same and as such, this aspect of the evidence has escape the scrutiny of the learned Tribunal.

24. This being the case, the contention of Mr. Jindal has validity as far as the nature of the driving licence of the said driver, Shri Sylvester Sohtun at the time of the accident is concerned that the same is not valid for transport vehicle.

25. In the light of the above, what has been established herein is that the fact that the said driver Shri Sylvester Sohtun was holding a driving licence not endorsed to enable him to drive a transport vehicle constitutes a breach of the policy condition between the Insured and the Insurer, the Insurer is not liable to pay the compensation. However, in the light of a number of pronouncements by the Hon'ble Supreme Court including the case of *New India Insurance Co., Shimla* (supra), cited by the Appellant and also in the case of *Shamanna & Anr v. Divisional Manager, Oriental Insurance Company Limited & Ors: (2018) 9 SCC 650* wherein, at paragraph 15 of the same the Hon'ble Supreme Court, under the facts and circumstances has directed the Insurance company to pay the enhanced compensation to the Claimant along with accrued interests and the Insurance company to recover the same from the owner of the vehicle, the same principle of pay and recover is made applicable in this instant case.

26. On the next point of contention raised by Mr. Jindal that is, the rate of interest which according to him should not be quantified at the rate of 9% pa but in the light of the recent judgment of the Hon'ble Supreme Court and considering the economic condition of the country as well as the prevailing rate of interest offered by the banks, the rate of interest should have been pegged at 6% pa, this Court having considered the authority cited by the learned counsel that is, the case of *Smti Ronilla Ch. Marak & Anr. v. Mr, Aftar Ali & Ors* in which this Court vide order dated 27.08.2021 in MAC App. No. 5 of 2018, while dealing with the issue of interest in the said case,

relying on relevant judgments of the Hon'ble Supreme Court has allowed the interest of 6% pa instead of 9% pa to be awarded on the award of compensation given. This being the case, this instant case being similarly situated as far as the issue of interest is concerned, this Court is inclined to confine the rate of interest herein to 6% pa.

27. Consequently, this appeal is allowed to the extent indicated above, with further direction to the Appellant/New India Assurance Co. Ltd., Shillong to satisfy the award modified herein within a period of 30(thirty) days from the date of this order.

28. With the above, this appeal is hereby disposed of.

29. Registry is directed to send back the case record.



Judge

Meghalaya
10.11.2021
"D. Nary, PS"